IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1203 of 2001

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAURASHTRA PAINTS LTD. - Petitioner(s)

Versus

KUSUMBEN M MANSURI - Respondent(s)

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Appearance :
Mr. Anup Krishnan for M/S TRIVEDI & GUPTA for Petitioner
MR MAHENDRA K PATEL for Respondent
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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 15/12/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 20th May 2005 passed by Labour Court, Ahmedabad, in Reference (LCA) No.127 of 1998 whereby the Labour Court directed the petitioner to pay an amount of Rs.82424.28 to the respondent.

2. The short facts of the case are as under:

2.1 The respondent was working with the petitioner company as “Overseer” and he was promoted as Supervisor with effect from 1st April 1993. The retirement age of the post of Supervisor is 58 yeas. The respondent attained the age of superannuation i.e. 58 years on 4th March 1997. Accordingly he was served a letter dated 24th February 1997 relieving him from service with effect form 4th March 1997. The respondent has accepted the relieving order and accepted all the retirement dues including gratuity.

2.2 After retirement the respondent raised a dispute which was referred to the Labour Court, Ahmedabad, which was registered as Reference (LCA) No.127/98. After hearing the parties, the Labour Court passed the award as stated hereinabove.

3. Learned counsel for the petitioner submitted that the Labour Court has committed an error in passing the award in question in view of the fact that the respondent has attained the age of superannuation and she had received the retirement dues. He submitted that the respondent cannot raise a dispute with regard to his date of birth after his retirement from service.

4. Mr.M.K. Patel appearing for the respondent submitted that there was a mistake in the date of birth and only after retirement the respondent has noticed about it. He therefore justified the award passed by the Labour Court. Mr. Patel further submitted that other employees were continued in service after the age of 58 and therefore the services of the respondent should have been continued.

5. As a result of hearing and perusal of the record it is found that there is no dispute with regard to the fact that as per the record of the petitioner, the respondent has attained the age of superannuation i.e. 58 years as on 4th March 1997. She has accepted the communication relieving from service with effect from the said date. The respondent has also accepted the retirement dues like gratuity, P.L. encashment, etc. and has issued a receipt in that behalf. Prior to this period the respondent has never raised any dispute with regard to the correctness of her date of birth. Therefore, once having accepted the retirement dues, it is not open to the respondent to plead that her date of birth is not correct and that she should be continued in service. If at all the date of birth is not correct as per the record, the respondent ought to have corrected the same as soon as she joined the service. In the present case even after 19 years no steps were taken to correct the date of birth. This dispute was raised only after she retired from service. In the case of Union of India and others Vs. Major R.N. Mathur, reported in (1997)1 SCC 225 it is

held that the employee must retire at the age of 55 years in terms of the appointment order.

6. As regards the contention that the petitioner has continued other employees after the age of 58 cannot be considered inasmuch as it is the discretion of the employer to continue an employee after his age of retirement. The workman cannot claim continuation of service as a matter of right after retirement from service.

7. In the premises aforesaid, the award of the Labour Court is required to be quashed and set aside. Accordingly the award of the Labour Court is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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